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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/726,406   | 12/03/2003  | Jason M. Crippen     | 29351.00            | 5569             |
| 23465 7590 12/15/2008<br>PITTS AND BRITTIAN P C<br>P O BOX 51295<br>KNOXVILLE, TN 37950-1295 |             |                      |                     |                  |
| EXAMINER   |             |                      |                     |                  |
| AHMED, AFFAF   |             |                      |                     |                  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
| 3622   |             |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/726,406

**Applicant(s)**

CRIPPEN ET AL.

**Examiner**

AFAF AHMED

**Art Unit**

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 October 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 and 10-22 is/are pending in the application.  
4a) Of the above claim(s) 8 and 9 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-7 and 10-22 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17 (e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17 (e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/29/2008 has been entered.
2. Claims 1, 7, 10, 11, 15, and 19 have been amended.
3. Claims 8 and 9 have been canceled.
4. Applicant has correctly marked claims 1, 7, 10, 11, 15 and 19 as being amended, therefore the objection is withdrawn.
5. Claims 1-7, 10-22 are currently pending and have been examined.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claims 2, 6, 7 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. Claims 7 and 10 recite the limitation of: *customizing said advertisement by a user; selecting an advertisement for playback; initiating playback of said advertisement to a caller*. It is unclear which advertisement Applicant is referring to by *initiating playback of said advertisement to a caller*. Is it the customized advertisement by a user or the selected advertisement for playback? Appropriate correction and/or clarification is required.
9. Claim 2, 7, and 10 recite the limitation of: *reading a plurality of user information*. It is unclear what Applicant is referring to by *reading a plurality of user information*. Does Applicant mean reading a plurality of users information or reading a plurality of user information. Appropriate correction and/or clarification is required.
10. Claim 6 recites the limitation of: *a telephone router for routing an unanswered telephone call to said at least one server, said unanswered telephone call being directed originally to a cellular telephone user*. It is unclear what Applicant is referring to by *a telephone router for routing an unanswered telephone call to said at least one server, said unanswered telephone call being directed originally to a cellular telephone user*. Does the Applicant mean the unanswered call routed to a server or to a cell phone. Appropriate correction and/or clarification is required.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 1-7 10-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over of Matsubara et al, US Pat No: 7,113,571 B2 in view of Bayne, Us Pat No: 7,158,621 B2.

**Claims 1, 11, 15 and 19**

Matsubara discloses:

- *determining whether said caller terminated playback of said advertisement after initiation thereof and prior to playback of said advertisement in its entirety (see at least column 12, lines 30-45 and column 14, lines 3-7);*
- *billing an advertiser only if said at least one server determines that said caller did not terminate playback of said advertisement after initiation thereof and prior to playback of said advertisement in its entirety (see at least column 5, lines 31-38, column 15, lines 15-60);*

Matsubara does not specifically disclose, but Bayne however discloses:

- *selecting an advertisement for playback (see at least column 8, lines 14-30);*
- *initiating playback of said advertisement to a caller (see at least column 5, lines 12-18);*

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Matsubara's communication management system and method with Bayne's

advertising voice mail system with the motivation of providing consumers with a reduced billing rate, while offering advertisers with additional venue to generate revenues.

**Claims 2, 13, 17, and 21:**

Matsubara /Bayne disclose the limitations as shown above.

Matsubara further discloses:

- *reading a plurality of user information* (see at least column 6, lines 32-38);

**Claims 3, 14, 18 and 22:**

Matsubara/ Bayne disclose the limitations as shown above.

Matasubara further discloses:

- *a user customizing said advertisement* (see at least column 18, lines 58-65);

**Claims 4, 12, 16 and 20:**

Matsubara /Bayne disclose the limitations as shown above.

Matasubara further discloses:

- *billing said advertiser includes charging said advertiser an advertiser fee and crediting a user portion of said advertiser fee* (see at least column 16, lines 50-66);

**Claims 5 and 6:**

Matsubara/ Bayne disclose the limitations as shown above.

Matsubara does not specifically disclose, but Bayne however discloses:

- *a telephone router for routing an unanswered telephone call to said at least one server, said unanswered telephone call being directed originally to a cellular telephone user* (see at least column 4, lines 31-53);

**Examiner notes:** Applicant has claimed in claim 6, unanswered telephone call being directed originally to a cellular telephone user. However, whether the call is originated using a cell phone or regular phone does not affect the scope of the invention and does not change the functionality of the server. The different types of phones are a non functional descriptive material (MPEP2106.01). For the purpose of this examination Examiner interprets the cellular phone to be any type of phone used for communication between two parties.

**Claims 7 and 10:**

Matsubara discloses:

- *customizing said advertisement by a user* (see at least column 18, lines 58-65);
- *reading a plurality of user information* (see at least column lines 32-38);
- *determining whether said caller terminated playback of said advertisement after initiation thereof and prior to playback of said advertisement in its entirety* (see at least column 12, lines 30-45 and column 14, lines 3-7);
- *billing an advertiser only if said at least one server determines that said caller did not terminate playback of said advertisement after initiation thereof and prior to playback of said advertisement in its entirety and crediting a user portion of said advertiser fee* (see at least column 5, lines 31-38, column 14, lines 3-7, column 15, lines 43-60 and column 16, lines 50-66);

Matsubara does not specifically disclose, but Bayne however discloses:

- *a telephone router for routing an unanswered telephone call to said at least one server said unanswered telephone call being originally directed to a cellular telephone use* (see at least column 4, lines 31-53);
- *a storage component for advertisements and messages; and an input/output component for communicating with said telephone router* (see at least column 6, lines 1-17);
- *selecting an advertisement for playback* (see at least column 8, lines 14-30);
- *initiating playback of said advertisement to a caller* (see at least column 5, lines 12-18);

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Matsubara's communication management system and method with Bayne's advertising voice mail system with the motivation of providing consumers with a reduced billing rate, while offering advertisers with additional venue to generate revenues.

### **Conclusion**

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Affaf Ahmed whose telephone number is 571-270-1835. The examiner can normally be reached on Monday - Friday, 8:30 am-6:00 pm est, alt Fridays off.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached at 571-272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3622

Information regarding the status of an application may be obtained from the Patent Application Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AA

/Yehdega Retta/  
Primary Examiner, Art Unit 3622